

**FILED**

DEC 31 2012


  
Clerk

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION**

MARINA CUELLAR, and  
EDELMIRA CUELLAR  
Plaintiffs,

vs.

AVERA HEALTH PLANS, INC. and  
JOHN MORRELL & CO.,

Defendants.

Case No. 12-4220**JOINT NOTICE OF REMOVAL**

To the Honorable Judges of the United States District Court for the District of South Dakota, Southern Division:

Removing parties, John Morrell & Co. and Avera Health Plans, Inc. by its undersigned attorneys, respectfully show this Court:

1. John Morrell & Co. and Avera Health Plans, Inc. are the defendants in the above-entitled action.
2. On December 3, 2012, John Morrell was served with a summons and complaint, thus commencing the above-captioned action pursuant to SDCL 15-6-3 and SDCL 15-2-30.
3. On December 4, 2012 Avera Health Plans, Inc. was served with a summons and complaint in the above-titled action.
4. Plaintiffs have not yet file the action with the Clerk of the Court of the Second Judicial Circuit Court, Minnehaha County so no case number has been assigned.
5. The above-entitled action is a civil action arising out of Plaintiff Marina Cuellar's participation in the John Morrell Employee Health Plan and claims for benefits submitted on behalf of Edelmira Cuellar. John Morrell & Co. is the Sponsor and Administrator of the John

Morrell Employee Health Plan which is a self-insured, employee welfare plan governed by the Employee Income Retirement Security Act of 1974, as amended (“ERISA”). Avera Health Plans, Inc. serves as the third-party administrator for the John Morrell Employee Health Plan. Plaintiffs have asserted causes of action for Breach of Fiduciary Duty and Equitable Estoppel against Defendants arising out the administration of the John Morrell Employee Health Plan.

6. This Court has original and exclusive jurisdiction of the above-entitled action pursuant to 29 U.S.C. §1132(a)(1), (e) and (f) and 28 U.S.C. § 1331. The action may therefore be removed to this Court pursuant to 28 U.S.C. § 1441(a).

7. Copies of the summons and complaint served on John Morrell & Co. in the above-entitled action are attached as Exhibit 1 to this Notice.

8. Copies of the summons and complaint served on Avera Health Plans, Inc. in the above-entitled action are attached as Exhibit 2 to this Notice.

9. This notice is filed with this Court within 30 days of service upon John Morrell & Co. and Avera Health Plans, Inc. of the summons and complaint in the above-entitled action.

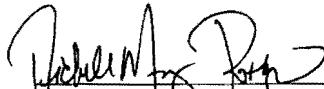
10. On the date set forth below, a copy of this notice is being served on Plaintiffs’ attorney.

11. The Defendants wish to remove this action from the Second Judicial Circuit Court in Minnehaha County, and to have all further matters herein proceed in the United States District Court for the District of South Dakota, Southern Division. This Notice is filed with the Court pursuant to 29 U.S.C. § 1132, 28 U.S.C. § 1331 and 28 U.S.C. § 1446.

WHEREFORE, removing parties request that the above-entitled action be removed from the Second Judicial Circuit, Minnehaha County, South Dakota Court to this Court.

Dated at Sioux Falls, South Dakota, this 31<sup>st</sup> day of December, 2012.

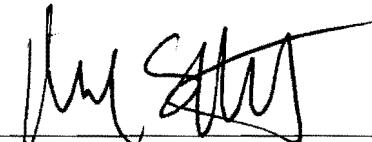
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Attorneys for John Morrell & Co.

BOYCE, GREENFIELD, PASHBY & WELK



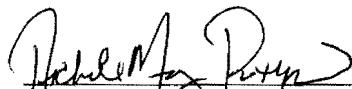
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Attorneys for Avera Health Plans, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31<sup>st</sup> day of December 2012, I have served a true and correct copy of the Joint Notice of Removal upon the attorney for Plaintiff s by U.S. Mail, postage prepaid, to the following address:

Scott G. Hoy  
Hoy Trial Lawyers, Prof. L.L.C.  
1608 Russell Street  
Sioux Falls, SD 57104



Nichole Mohning Roths